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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 SEATTLE TIMES COMPANY,
9 Plaintiff,

10 v.

11 LEATHERCARE, INC.; STEVEN RITT;
12 and the marital community composed of
13 STEVEN RITT and LAURIE ROSEN-
14 RITT,

15 Defendants/Third-Party
16 Plaintiffs,

17 v.

18 TOUCHSTONE SLU LLC; TB TS/RELP
19 LLC; AMERICAN LINEN SUPPLY
20 CO.; and DOES 1-20,

21 Third-Party Defendants.
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C15-1901 TSZ

MINUTE ORDER

24 The following Minute Order is made by direction of the Court, the Honorable
25 Thomas S. Zilly, United States District Judge:

26 (1) Plaintiff Seattle Times Company's motion for partial summary judgment
27 as to the liability of defendant Steven Ritt, docket no. 53, and Ritt's cross-motion for
28 summary judgment, docket no. 59, are DENIED. Whether Ritt was an "operator" for
29 purposes of the Comprehensive Environmental Response, Compensation, and Liability
30 Act ("CERCLA") or Washington's Model Toxics Control Act ("MTCA") involves
31 genuine issues of material fact. *See* Fed. R. Civ. P. 56(a); *see also United States v.*
32 *Bestfoods*, 524 U.S. 51, 66-67 (1998) (to qualify as an "operator," an individual must
33 "manage, direct, or conduct operations specifically related to pollution," *i.e.*, "operations
34 having to do with the leakage or disposal of hazardous waste, or decisions about

1 compliance with environmental regulations”); Allied Waste Transp., Inc. v. John Sexton
2 Sand & Gravel Corp., 2016 WL 3443897 (N.D. Ill. June 23, 2016) (concluding that
3 whether executives of the corporate defendant were “operators” under CERCLA involved
4 factual disputes); California v. Celtor Chem. Corp., 901 F. Supp. 1481 (N.D. Cal. 1995)
5 (denying the individual defendant’s motion for summary judgment, concluding that
6 genuine issues of material fact existed as to whether the individual defendant qualified as
7 an “operator”).¹ Whether Ritt was an “arranger” under CERCLA or the MTCA also
8 involves genuine issues of material fact.² See Fed. R. Civ. P. 56(a); see also Burlington
N. & Sante Fe Ry. Co. v. United States, 556 U.S. 599, 610 (2009) (observing that, with
regard to situations falling between (i) a transaction for the sole purpose of disposing of
hazardous waste, and (ii) the sale of a new and useful product that was improperly
discarded without the seller’s knowledge, neither of which are at issue in this matter, the
determination of “whether an entity is an arranger requires a fact-intensive inquiry that
looks beyond the parties’ characterization of the transaction . . . and seeks to discern
whether the arrangement was one Congress intended to fall within the scope of

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10 ¹ Most of the cases cited by plaintiff in support of its motion for partial summary judgment regarding
11 “operator” liability involved findings made by a trier of fact. See City of Los Angeles v. San Pedro Boat
Works, 635 F.3d 440 (9th Cir. 2011) (based on the jury’s answers to special interrogatories, the defendant
12 was deemed to lack the necessary possessory interest to be liable as an “owner”); City of Wichita v.
Trustees of APCO Oil Corp. Liquidating Trust, 306 F. Supp. 2d 1040 (D. Kan. 2003) (after an eight-week
13 bench trial, the district court found that three of the five individual defendants were not “owners” or
14 “operators”); Browning-Ferris Indus. of Ill., Inc. v. Ter Maat, 2000 WL 1716330 (N.D. Ill. Nov. 8, 2000)
(having conducted a two-week bench trial, the district court concluded that the president and principal
shareholder of the corporate defendants was an “operator” of the landfill at issue); Int’l Clinical Labs. Inc.
v. Stevens, 1990 WL 43971 (E.D.N.Y. Jan. 11, 1990) (in a decision predating Bestfoods, the district court
concluded, after a five-day bench trial, that the individual defendants were liable under CERCLA).
Other cases cited by plaintiff predate Bestfoods and/or do not support plaintiff’s position. See New York
v. Shore Realty Corp., 759 F.2d 1032 (2d Cir. 1985) (applying a standard that is inconsistent with
15 Bestfoods); see also Riverside Mkt. Dev. Corp. v. Int’l Bldg. Prods., Inc., 931 F.2d 327 (5th Cir. 1991)
16 (holding that the plaintiffs failed to produce the requisite proof for “operator” liability, *i.e.*, evidence
showing that the individual defendant participated in any conduct that violated CERCLA). The only
authorities cited by plaintiff in which summary judgment was granted with respect to “operator” liability
involved (i) undisputed evidence that the individual defendant was “heavily and personally involved in
the construction and maintenance of” the sewer lines at issue, United States v. Meyer, 120 F. Supp. 2d
635, 640 (W.D. Mich. 1999), a very different procedural posture and factual scenario than in the case
before the Court, or (ii) the liability of corporate defendants, not individuals, United States v. NCR Corp.,
2012 WL 5893489 (E.D. Wis. Nov. 23, 2012) (granting in part and denying in part the government’s
motion for partial summary judgment, concluding that, as to one of four corporate defendants, disputed
material facts precluded a finding as a matter of law regarding “owner,” “operator,” or “arranger”
liability). Plaintiff also relied on Pope Res., LP v. Wash. State Dep’t of Natural Res., 197 Wn. App. 409,
389 P.3d 699 (2016), review granted, 188 Wn.2d 1002, 393 P.3d 357 (2017), in which the appellate court
reversed the trial court’s ruling that the defendant was not an “owner” or “operator” under the MTCA.
The Washington Supreme Court granted review in that matter on May 3, 2017, and the issue of whether
the MTCA’s definitions are broader than CERCLA’s remains unresolved.

22 ² The Court makes no ruling concerning whether plaintiff has adequately pleaded an “arranger” liability
23 claim in its Amended Complaint, or whether plaintiff may pursue an “arranger” liability claim at trial.

1 CERCLA's strict-liability provisions"); *City of Moses Lake v. United States*, 458 F. Supp.
2 2d 1198 (E.D. Wash. 2006) (granting a corporate defendant's motion for summary
3 judgment on statute-of-limitation grounds, but observing that, for purposes of any
contribution claim, whether the corporate defendant was an "operator" or "arranger"
involved genuine issues of material fact).³

4 (2) The Clerk is directed to send a copy of this Minute Order to all counsel of
record.

5 Dated this 20th day of September, 2017.

6 William M. McCool

7 Clerk

8 s/Karen Dews

9 Deputy Clerk

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18 ³ Plaintiff has cited no case in which summary judgment was granted and an individual defendant was
19 deemed to be an "arranger" as a matter of law. *See United States v. Shell Oil Co.*, 294 F.3d 1045 (9th Cir.
20 2002) (involving the "arranger" liability of the United States and four corporate defendants); *Nu-West*
21 *Mining Inc. v. United States*, 768 F. Supp. 2d 1082 (D. Idaho 2011) (concerning the liability of the United
22 States as an "owner," "operator," and/or "arranger" of waste disposal sites adjacent to leased mines);
23 *Basic Mgmt. Inc. v. United States*, 569 F. Supp. 2d 1106 (D. Nev. 2008) (regarding the "operator" and
"arranger" liability of Atlantic Richfield Company and the "arranger" liability of the United States);
Coeur d'Alene Tribe v. Asarco Inc., 280 F. Supp. 2d 1094 (D. Idaho 2003) (concluding, after a 78-day
trial, that the government was an "arranger" with respect to the construction of Interstate 90, for which it
paid 92% of the costs, as a result of which millions of cubic yards of tailings, containing thousands of
tons of lead and zinc, were used to line the roadbed and embankments).